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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 475th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 11 May 2001, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.475/Add.1.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Conclusions and recommendations concerning the initial report of Slovakia (CAT/C/24/Add.6; CAT/C/XXVI/Concl.4/Rev.1)

1. Ms. GAER, Country Rapporteur, read out the Committee's conclusions and recommendations concerning the initial report of Slovakia (CAT/C/24/Add.6), which were contained in document CAT/C/XXVI/Concl.4/Rev.1.

2. Mr. PETŐCZ (Slovakia) said that the conclusions and recommendations would be forwarded to all relevant authorities in Slovakia, who would do their best to remedy existing shortcomings.

3. The delegation of Slovakia withdrew.

The meeting was suspended from 3.20 p.m. to 3.30 p.m.

Initial report of Costa Rica (continued) (CAT/C/74/Add.7)

4. At the invitation of the Chairman, the delegation of Costa Rica took places at the Committee table.

5. Mr. GUILLERMET (Costa Rica) said that in its budget for 2001 the Costa Rican Government had appropriated the equivalent of US$ 34 million, or 72 per cent of the budget of the Ministry of Justice, to the General Directorate for Social Rehabilitation, the department responsible for prison administration, and the equivalent of US$ 7 million for prison construction and renovation.

6. Ms. RUIZ de ANGULO (Costa Rica) said that the office of the Ministry of Foreign Affairs that dealt with treaties was considering steps whereby Costa Rica would make the declarations under articles 21 and 22 of the Convention.

7. According to the Constitutional Court, international human rights treaties took precedence over the Constitution in cases where individuals enjoyed greater rights or guarantees under an international instrument.

8. Pursuant to article 75 of the Criminal Code, concerning multiple offences (a number of offences committed through a single act or omission), the courts were required to impose the penalty applicable to the most serious offence and could increase it where appropriate. Pursuant to article 76, concerning a series of offences (a number of offences committed separately or jointly), the courts imposed the penalties applicable to all the offences committed. However, the aggregate penalty could not amount to more than three times the most severe penalty or to more than 50 years' imprisonment.

9. The Constitution contained a number of articles guaranteeing the rights of accused persons, including non-retroactivity of legislation, privilege against self-incrimination, prohibition of detention without compelling evidence of the commission of an offence and a written arrest warrant, and respect for the principles of due process and non bis in idem. The provisions of the Constitution were backed up by case law covering numerous aspects of due process such as the presumption of innocence, the right to a public hearing, the double-hearing principle, which was not clearly enshrined in the Constitution but recognized by the American Convention on Human Rights, and the principle of res judicata.

10. The Code of Criminal Procedure recognized the principle of nullum crimen sine lege, the right of defendants to a judicial decision without unreasonable delay, the right to legal counsel from the outset of proceedings, the right to communicate immediately with a person of one's choice, the principle of equality of arms, the presumption of innocence and the independence of the judiciary. It prohibited the use of specially appointed courts and any extension of the meaning of legal provisions that restricted personal freedom or the rights of a party to legal proceedings. The authority involved in the early stages of an investigation was required to inform an accused person immediately of his or her rights under the Constitution and international law. Any petitions or observations formulated by an accused person held in custody must be transmitted to the court within 12 hours. Precautionary measures could be taken only in exceptional cases and must be proportionate to the penalty that could be imposed for an offence.

11. With regard to incommunicado detention, she said that under article 244 of the Code of Criminal Procedure an individual could be prevented, as a precautionary measure, from communicating with specific persons unless such action violated the rights of the defence. Under article 261 of the Code, a court could order incommunicado detention for up to 10 days if provision had already been made for pre-trial detention and there were grounds to suspect that the accused person would come to an agreement with accomplices or obstruct the investigation in some other way. Incommunicado detention would not prevent an accused person from communicating with counsel immediately before making a statement or taking any other similar step. Article 44 of the Constitution stipulated that the court order should be issued within 48 hours, but article 261 of the Code of Criminal Procedure was more favourable to the accused inasmuch as it stated that the Public Prosecutor's Office and the Judicial Police could hold a person incommunicado only for the time necessary to arrange for the court order, up to a maximum of six hours. Article 44 of the Constitution further stated that incommunicado detention could not, under any circumstances, prevent the exercise of judicial control. Under article 296 of the Code of Criminal Procedure it was possible to prohibit communications, even when an accused person was not deprived of liberty, for a maximum of 10 days, extendable by a further 10 days in specific cases.

12. Generally speaking, there was no legal limit to the duration of proceedings; article 171 of the Criminal Code merely stipulated that the Public Prosecutor's Office must conclude its investigations within a reasonable period of time. If the accused considered that proceedings had been unduly protracted, he or she could request the court to bring the preparatory phase to a close. The court had to bear the complexity of an investigation in mind when setting a deadline,

but six months was the maximum period allowed; in any case, only two months should elapse between indictment and sentencing. Article 164 of the Code of Criminal Procedure specified the remedies available if there were delays in proceedings while persons were deprived of liberty. Article 257 of the Code stipulated that pre-trial detention could last for one year, but was subject to review by the court every three months. The Higher Criminal Court of Appeal was entitled to extend that period by one year. If sentence had been pronounced, detention could be prolonged for a further six months, so that in some cases the maximum length of pre-trial detention might be two and half years, after which habeas corpus proceedings would be initiated immediately before the Constitutional Chamber.

13. As to penalties under indigenous law which might conflict with the provisions of the Convention, she said that the bill on the autonomous development of indigenous peoples had been set aside by the Legislative Assembly on account of a legal technicality and would have to be reintroduced. The bill had stipulated that constitutional law must be consistent with the national legal order. Thus the Constitution applied throughout the country, including the places where indigenous peoples lived, and the provisions of the Convention were applicable there as well.

14. While the lack of a definition of torture had limited the action of the judiciary, acts tantamount to torture had not gone unpunished, and the penalties that could be imposed ranged from 3 to 10 years' imprisonment, although such sentences were not in proportion to those imposed for the violation of other human rights.

15. The Committee had inquired about circumstances mitigating responsibility for torture. Articles 107, 108, 109 and 110 of the General Public Administration Act referred to civil and public servants' duty to obey orders and specified the grounds on which such persons were excused from carrying out an act that might be contrary to the Convention.

16. The Constitutional Chamber had ruled that extradition was possible only if a person's fundamental human rights were not thereby violated; consequently, no one facing the risk of torture could be extradited.

17. A bill defining torture had been endorsed by the Legal Committee of the Legislative Assembly in January 2001 but was not likely to be considered during the current session of the Assembly.

18. Article 4 of the Criminal Code guaranteed that the measures referred to in article 5, paragraph 1 (a), of the Convention would be taken, except that the offences in question would be defined as abuse of authority or grievous bodily harm. Criminal proceedings could be instituted in accordance with article 5, paragraphs 1 (b) and 1 (c), of the Convention under article 6 of the Criminal Code, with some cases covered by article 7 of the Code.

19. With regard to requests for the extradition of persons accused of committing torture and possible justification in Costa Rican law for granting such requests, she said that in deciding whether to accede to a request for extradition, Costa Rican courts would have to determine

whether the acts in question were unlawful and punishable both in Costa Rica and in the requesting State. In any case, article 3 of the Extradition Act and article 7 of the Criminal Code would apply to such requests, but any judgement would have to rest on the finding that the offence committed constituted abuse of authority or had caused grievous bodily harm.

20. Article 154 of the Criminal Code dealt with official requests for judicial assistance and article 209 set forth the procedure to be followed in order to obtain evidence from witnesses who were abroad.

21. Human rights education had been provided to prison staff at the national training institute in 2000. Six courses on the subject had been organized with the help of the Inter-American Institute of Human Rights for technical and professional prison staff. Such training would continue in the current year and would be extended to prison administrative staff. The courses used textbooks based on the United Nations Standard Minimum Rules for the Treatment of Prisoners. Human rights training was compulsory for all new prison warders and optional for those who had entered service before 1994.

22. Candidates for the police force were required to have three years of secondary schooling and a clean criminal record. They also had to pass medical, psychological and physical fitness tests and have completed basic police training. As Costa Rica had not had an army since 1949, police training was purely civilian in nature and included human rights lectures by lawyers which were intended to make them aware of their duty to respect human rights and abide by the law.

23. Prison warders reported to the Ministry of Justice, while the police force came under the Ministry of Security or local authorities. The judicial police were subject to the authority of the courts, traffic police were answerable to the Ministry of Public Works and Transport, and migration officials were employed by the General Directorate of Migration. A recent law had made the police a purely civilian body.

24. The requirement that three police officers should be present during an interrogation, mentioned in paragraph 756 of the report, was established in a directive on the questioning of persons arrested by the municipal police of San José. The police could not interrogate or take statements from persons who had been charged; that was the responsibility of the Public Prosecutor's Office. Interrogations were not recorded.

25. The Handbook of Criminal Investigation Procedures had last been updated in 1998 when the Code of Criminal Procedure had entered into force. Memoranda from the General Directorate of the Judicial Investigation Department could also be regarded as amendments to the Handbook. The quickest way to initiate an impartial investigation of possible breaches of the Convention was to invoke the remedy of habeas corpus before the Constitutional Chamber.

26. According to the Code of Criminal Procedure, every prison must be visited by a judge at six-month intervals. Almost all interviews conducted in prisons by judges were private. Emergency visits were carried out from time to time.

27. The Ombudsman's functional independence was authorized in the Law for the Protection of the Inhabitants of the Republic and would be enhanced if the Ombudsman was elected by a two-thirds majority, rather than a simple majority, of deputies. It was felt that the Ombudsman's office had managed to preserve its independence because of the objective, technical criteria used in its investigations and the transparency of those investigations. The Ombudsman visited every prison in the country at least once a year and in fact made many more visits to look into cases of aggression, hunger strikes or other incidents about which prison authorities had failed to provide sufficient information. Requests for visits in such cases were made in writing or through a toll-free telephone line. Visits were held in private and at least three a month were made to the country's main prison.

28. In response to questions regarding the Public Prosecutor's Office, the Judicial Investigation Department and the handling of complaints, in particular complaints alleging torture, she said that the Public Prosecutor's Office was responsible to the Supreme Court. The Judicial Investigation Department, although under the operational control of the Public Prosecutor when investigating crimes, was an auxiliary investigating body of the judiciary, also responsible to the full court. The Public Prosecutor's Office made every effort to ensure coordination with the Judicial Investigation Department in order to ensure that due process was observed. Any complaints against police officials were investigated by the Public Prosecutor. Any complaints involving habeas corpus were dealt with by the Constitutional Court, which could order detainees to appear before it, review evidence or take any steps it deemed necessary. In addition, there was a judicial inspection section within the Judicial Investigation Department which was responsible for monitoring the Department's own procedures. Although she had no statistics regarding complaints other than those mentioned in the report (paras. 819-821), she noted that complaints often dealt with the same incident, and many were dismissed for lack of evidence, on legal technicalities or because the accused was deceased.

29. There were no statistics on complaints of torture, because torture was not defined as a specific offence; the report did, however, contain a list of offences included under the category "abuse of authority" (paras. 819-821). An allegation involving torture could be prosecuted under three criminal categories: abuse of authority, homicide with aggravating circumstances or aggravated assault and battery. Complaints could be filed with the Constitutional Court, whose office for the registration of complaints was open 24 hours a day 365 days a year, with offices of the Public Prosecutor, which were also open year-round, or with the Ombudsman. Most members of the Judicial Investigation Department were dedicated professionals who would conduct a fair and independent investigation of any alleged abuses. In the case of William Lee Malcolm, for example, internal investigation procedures had produced a satisfactory outcome. Torture or abuse of authority by officials was not tolerated, as clearly indicated in paragraph 883 of the report.

30. Following arrest, an individual could spend a maximum of 24 hours in police custody, during which time the Public Prosecutor must bring him or her before a judge and decide whether to request preventive detention or any other measure. The Prosecutor's Office had an

obligation to complete any investigation within a reasonable period of time. If it did not submit a request for preventive detention by the 24-hour deadline, however, a judge could order the detainee freed.

31. As to conditions in prisons and the possibility of alternative sentencing or release on bail, she said that the Ministry of Justice had in recent years made considerable efforts to improve the penitentiary infrastructure, including an investment of nearly $7 million in 2000, without including the Pococí maximum security prison, which had a separate budget. The prison population had increased greatly because the maximum prison term had been increased from 25 to 50 years, and the minimum time served before release for such sentences had likewise doubled from 7 to 14 years. In addition, greater use was being made of preventive detention, and drug-related and property crimes were increasing. However, efforts were being made to reduce the prison population. Alternative sentencing was being used, and there were currently 3,580 men and 457 women sentenced to community service.

32. In response to questions about prison guards and complaints against them, she said that guards who had direct contact with prisoners were not armed, although the penitentiary authorities had special squads to deal with prison unrest; however, they had been instructed to avoid the use of arms, except as a last resort. Under normal circumstances, no weapon could be carried into the prison, and guards could use tear gas only if authorized to do so by the Ministry of Justice. Prisoners could register complaints against guards, who, if found guilty following an administrative investigation, could be dismissed. Complaints could also be made to the Public Prosecutor's Office, thereby triggering criminal proceedings. Referring to the case of guards who made a prisoner deaf as a result of the "telephone" method of torture, she confirmed that the guards had been suspended for five years and, as they had thus acquired a criminal record, could not resume their functions. The circumstances of their suspension had been noted in police records.

33. There was only one prison for women, in the capital, which held 276 convicted women, 176 women under investigation and one person who had defaulted on support payments. With regard to the question of inter-prisoner violence, she stressed that the authorities reacted quickly in such cases, and inmates could request to be moved to a different cell if they felt they were under the threat of physical or sexual violence; all such requests were kept confidential.

34. Responding to concerns about the possible militarization of the police, she recalled that Costa Rica had no armed forces and said that the recent agreement concluded with the United States of America on the exchange of information, capacity-building and training was for the sole purpose of combating the drug trade, which recognized no boundaries and required full cooperation among States. Discussions were under way for a Central American convention on that same issue.

35. Lastly, in response to questions about the preparation of the report, she said that questionnaires had been sent to and meetings held with public agencies and non-governmental organizations (NGOs) and visits had been made to penitentiaries, psychiatric hospitals, NGO projects, official institutions and universities. A first draft of the report had been sent to public agencies and NGOs for comments, and the final report had been prepared taking into account their observations.

36. Mr. GONZÁLEZ POBLETE, Country Rapporteur, thanked the delegation for its detailed responses and said that virtually all the concerns raised had been dealt with, although the State party should bear in mind the need to submit future reports on time.

37. Mr. RASMUSSEN asked whether the Judicial Investigation Department was a body of the Ministry of Justice.

38. Mr. SOLANO (Costa Rica) said that the Judicial Investigation Department was a technical auxiliary police body which reported to the Supreme Court; it and the Public Prosecutor's Office were the main auxiliary judicial bodies.

The public part of the meeting rose at 4.45 p.m.